IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO.: 4:17CR00866-RBH
	)	
BRANDON MICHAEL COUNCIL	)	

MOTION FOR COMPETENCY EVALUATION AND MOTION FOR CONTINUANCE OF TRIAL PROCEEDINGS

Counsel for Brandon Council requests a brief continuance until Monday morning, September 23, 2019, in order to conduct a competency evaluation pursuant to 18 U.S.C. §4241 and Federal Rules of Criminal Procedure 12.2(c)(1)(A). Counsel submit that Brandon Council is presently suffering from a mental disease or defect rendering him unable to assist properly and rationally in his defense.

LEGAL STANDARDS

Due process requires that a defendant be competent during a criminal proceeding. *Medina v. California*, 505 U.S. 437, 448 (1992). The standard for competence to stand trial is whether the defendant has "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding Band whether he has a rational as well as factual understanding of the proceedings against him.'" *Drope v. Missouri*, 420 U.S. 162, 171 (1975). An inquiry into defendant's competency to stand trial must be made whenever there is reasonable cause to believe that defendant is incompetent, and the first step in such inquiry is

an examination of defendant by a psychiatrist. *United States v. Marshall*, 458 F.2d 446 (2d Cir. 1972).

Under 18 U.S.C. §4241, counsel may file a motion for a hearing to determine the mental competency of the defendant. This section sets forth a "reasonable cause" standard such that, if met, the Court must grant the motion or order a competency hearing in accordance with 18 U.S.C. § 4247(d). In making its decision, the Court must determine "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. §4241(a).

18 U.S.C. §4241(a) makes clear that the hearing is mandatory. *See United States v. Mason*, 52 F.3d 1286, 1289 (4th Cir. 1995) ("The district court must *sua sponte* order a competency hearing if reasonable cause is demonstrated."); *United States v. White*, 887 F.2d 705, 710 (6th Cir. 1989) ("[T]he provision for a hearing is mandatory upon a determination of reasonable cause to believe that the defendant is incompetent to stand trial."). "Indeed, under the federal statute, the district court has not only the prerogative, but the duty, to inquire into a defendant's competency whenever there is 'reasonable cause to believe' that the defendant is incompetent to stand trial. Likewise, failure to order a hearing when the evidence raises a sufficient doubt as to a defendant's competence to stand trial deprives a defendant

of due process of law." *White*, 887 F.2d at 709 (citing *Pate v. Robinson*, 383 U.S. 375, 385 (1966)).

This Court has demonstrated its knowledge and sensitivity to this issue, and had previously raised issues *sua sponte* regarding Mr. Council's competency. *See, e.g.*, ECF No. 83 (scheduling a status conference and ordering that "The lawyers should also be prepared to discuss the Court's consideration of a Section 4241 competency evaluation."); ECF No. 93 (ordering "Counsel to submit memos to the Court on April 9, 2018 regarding § 4241 issue").

Defense counsel are under a similar obligation to raise competency issues whenever it arises:

> [W]here there are substantial indications that the defendant is not competent to stand trial, counsel is not faced with a strategy choice but has a settled obligation . . . under federal law . . . to raise the issue with the trial judge and ordinarily to seek a competency examination.

United States v. Sampson, 820 F. Supp. 2d 202, 245 (D. Mass. 2011).

"[I]t is not enough for the district judge to find that the defendant (is) oriented to time and place and (has) some recollection of events, but [] the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960) (internal quotation omitted).

Reaffirming *Dusky*, the Supreme Court in *Godinez v. Moran*, 509 U.S. 389, 402 (1993), reasoned that "[r]equiring [] a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the

proceedings and to assist counsel." This fundamental goal means that, "[f]or the defendant, the consequences of an erroneous determination of competence are dire. Because he lacks the ability to communicate effectively with counsel, he may be unable to exercise other 'rights deemed essential to a fair trial.'" *Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996) (quoting *Riggins v. Nevada*, 504 U.S. 127, 139 (1992) (Kennedy, J., concurring in judgment)).

So cardinal is this "modest aim" to a defendant's constitutional rights that the Supreme Court has held that requiring a defendant to show he was incompetent by clear and convincing evidence was unconstitutional because that standard failed to "'jealously guard[]' . . . an incompetent criminal defendant's fundamental right not to stand trial." *Cooper*, 517 U.S. at 363 (quoting *Jacob v. New York City*, 315 U.S. 752, 752-53 (1942)). In so holding, the Court reasoned that this fundamental right outweighs the government's interest "in the prompt disposition of criminal charges" and its interest "in the efficient operation of its criminal justice system." *Cooper*, 517 U.S. at 367. Consequently, it held that requiring a defendant to meet the burden of proving his incompetency to a "preponderance of the evidence" was constitutionally appropriate. *Id.* at 355, 362 (noting that "Congress has directed that the accused in a federal prosecution must prove incompetence by a preponderance of the evidence.).

18 U.S.C. §4241 and relevant case law require that the defendant be competent at *all* stages of the proceedings. It is immaterial whether the issue of competency is raised before, during, or after trial. *See Mason*, 52 F.3d at 1290

(noting that "the standard in § 4241 governs whether the competency issue is raised before or after trial"); *White*, 887 F.2d at 709 (noting that § 4241 "contemplates inquiry over a wide period of time—'[a]t any time after the commencement of a prosecution for an offense and prior to the sentencing of defendant.'"). *See also United States v. Kerr*, 752 F.3d 206, 216 (2d Cir. 2014) (internal quotation marks and citation omitted) ("The right not to be prosecuted while incompetent spans the duration of a criminal proceeding."); *United States v. Andrews*, 469 F.3d 1113, 1120 (7th Cir. 2006) ("[D]istrict courts must, at all times during the trial process, guard against trying an incompetent defendant regardless of when the incompetency materializes or what caused it to occur."); *Chavez v. United States*, 656 F.2d 512, 515 (9th Cir. 1981) ("Due process requires a trial court to hold a hearing, *sua sponte*, on a defendant's competence to plead guilty whenever the trial judge entertains or reasonably should entertain a good faith doubt as to the defendant's ability to understand the nature and consequences of the plea, or to participate intelligently in the proceedings and to make a reasoned choice among the alternatives presented."); *Noble v. Black*, 539 F.2d 586, 592 (6th Cir. 1976) (due process required that the opinion of a doctor that the defendant should see a psychiatrist, as well as other evidence suggestive of incompetency, "should have been inquired into, … at whatever stage of the proceedings such evidence was sought to be introduced and became available, even after verdict and judgment, as bearing upon appellant's competency . . . .").

With the Supreme Court's "modest aim" in mind, and in light of the evidence of Mr. Council's incompetency discussed below, the Court should allow the defense time to conduct a competency evaluation and a hearing to determine Mr. Council's mental competency to proceed. The Fourth Circuit has held denial of such motion to seek an examination is subject to review for abuse of discretion. *See United States v. Burgin*, 440 F.2d 1092 (4th Cir. 1971) (Court required to grant motion unless not made in good faith or the grounds appear frivolous). The remedy for denial is reversal of the conviction and remand for a competency hearing. *Burgin*, 440 at 1095 (citing *Dusky*, 362 U.S. 402 (1960)).

APPLICATION

Following today's trial proceedings, Counsel for Brandon Council are of the firm view that a competency evaluation is necessary. At the present time, Brandon Council is unable to understand the nature and consequences of the proceedings against him and is not assisting properly in his defense. *See Medina v. California*, 505 U.S. 437, 450 (1992) ("[D]efense counsel will often have the best-informed view of the defendant's ability to participate in his defense"); *Drope*, 420 U.S. at 177 n.13 (recognizing the importance of considering counsel's judgment about the defendant's state of mind). As such, Counsel immediately contacted an expert after today's proceedings to conduct such an examination and expressed the urgency of the moment. The expert agreed to conduct the hearing at the earliest possible time, the next day – Friday, September 20, 2019. Given the stage of the proceedings, a continuance in the proceedings until Monday, September 23, 2019, would be

prudent so that the expert would be able to conduct the evaluation and provide vital information regarding Mr. Council's ability to proceed. Counsel believe that their client is presently mentally ill and unable to proceed. Further details can be provided to the Court in an *ex parte* discussion as to why counsel hold this belief.

CONCLUSION

Because Counsel for Brandon Council believe Mr. Council is unable to understand the nature and consequences of the proceedings against him and is not capable of assisting properly or rationally in his defense, due to mental disease or defect, the Court should suspend court proceedings until Monday, September 23, 2019, so that a competency evaluation can be completed and so that counsel may report their client's status back to the Court.

Respectfully submitted,

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September 19, 2019

Florence, South Carolina